

Divisions Affected - All

AUDIT & GOVERNANCE COMMITTEE

13 March 2024

Local Enterprise Partnership (LEP) Functions: Transition Arrangements

**Report by
Executive Director of Resources**

RECOMMENDATIONS

1. The Committee is **RECOMMENDED** to
 - a. **Note the government announcement on the transfer of Local Enterprise Partnership core functions.**
 - b. **Note the approach to LEP transition and proposed changes to OxLEP Ltd governance.**
 - c. **Note that there will be further work on the governance arrangements during the implementation phase and an update will be brought to committee in approximately six months' time.**

Executive Summary

2. Government has announced that from 31 March 2024, Local Enterprise Partnerships (LEPs) will cease to have official recognition and that existing LEP functions will transfer to upper-tier local authorities or combined authorities, where they exist.
3. Following this announcement, it is important to establish a new governance framework to ensure local arrangements continue to meet government guidance. The County Council has agreed to create a controlling interest in OxLEP Ltd and become the sole member. To enable this to happen the OxLEP Ltd Board will need to consider and approve a revision to its Articles of Association and By-Laws whereby the County Council will become the sole 'member' of the company, exercising its membership functions through Cabinet.
4. Following agreement of Cabinet on 27 February 2024, the proposals for LEP transition are due to be considered by OxLEP Ltd Board on 12 March 2024.

5. If the proposed approach is agreed by the Board of OxLEP Ltd the County Council will need to review mechanisms for exercising oversight of the company, including paying specific attention to how the council will manage the sole member function and any additional audit and governance requirements.

Background

6. Formally launched in March 2011, OxLEP Ltd was initially established as a partnership with the local authorities, businesses and education sector in the area, and was incorporated as a not-for-profit company limited by guarantee on 31 March 2015.
7. Oxfordshire County Council acts as OxLEP's Accountable Body in respect of OxLEP Ltd's core funds and any additional central government funding received.
8. In August 2023, government confirmed that from April 2024, the government's sponsorship and funding of LEPs will cease. The associated guidance states that the government expects the functions currently delivered by LEPs – namely, business representation, strategic economic planning, and the delivery of government programmes where directed – to be exercised by upper tier local authorities, where they are not already delivered by a combined authority. In Oxfordshire's case this means Oxfordshire County Council.

Proposed Approach

9. To ensure an orderly transfer of functions and then subsequent development and design to support the delivery of future strategy, a three-phase approach to transition has been developed to cover transition, implementation, and establishment. This is set out below:
 - a. **Phase 1 – Transition (By 1 April 2024)**

During this phase, interim governance arrangements will be put in place, to be agreed in consultation with the current LEP board, but to establish Council control as per government guidance, demonstrating that the functions move to the County Council. The Corporate Director of Environment and Place will have day to day responsibility for the LEP functions (within the company arrangements to be agreed) and company registered office address (if relevant) will be amended to County Hall.
 - b. **Phase 2 – Implementation (1 April – 30 September 2024)**

During the first six months there will be a review of purpose and economic planning, including updates to the Strategic Economic Plan. A medium-long term business plan will be developed along with ongoing review of operational alignment with existing council economic and related functions. The medium-term approach to business engagement and broader partnership bodies will also need review in-line with the new operating model and strategy. Alignment of policy and processes, ensuring optimum operational efficiency with the County Council will also form part of this review. The current board will be asked to continue to serve to support the implementation process.

c. Phase 3 – Establishment (1 October 2024 – 31 March 2025)

Having developed a new medium-long term business plan we would expect revised operating model, structure and governance to be fully implemented during this period. The revised links and interactions with wider economic development resources within the Oxfordshire system will be reviewed.

Governance Framework

10. Given the Government's decision to devolve LEP responsibilities to upper tier local authorities before the end of March 2024 a revised governance framework is needed that ensures that the County Council, as the body accountable for decisions, retains ultimate control.
11. The proposal is that a County Council controlling interest is created within the existing company structure and if agreed by the OxLEP Ltd Board the County Council will become the sole member of OxLEP Ltd. The company member function will be exercised by Cabinet during the implementation phase. However, this function may be delegated to an individual cabinet member, sub-committee, or officer in future, following a review of the mechanisms through which the County Council exercises governance of its entities and the future governance structure of the LEP itself.
12. Under the proposed approach, to avoid public procurement and VAT reclaim issues, the company would most likely need to qualify as a "Teckal" company. A Teckal company is a type of company that is wholly owned by a local authority and is exempt from certain procurement regulations. To be Teckal compliant, the local authority must control all of the shares in the company and must also exercise effective day-to-day control over its affairs. The company must be "inwardly and not outwardly focused". At least 80% of the activity of the Teckal company must be for its public sector owners.
13. As noted above, OxLEP is set up as a company limited by guarantee, this means that it has a 'member' rather than 'shareholder' structure. The County Council needs to consider how it exercises control of the company and how oversight will be undertaken. Best practice guidance from Local Partnerships has been considered and while aimed primarily at Local Authority Trading Companies with a shareholder structure, provides a model that can be adapted for companies limited by guarantee. This guidance has helped to inform the initial principles which are explored in the following paragraphs of this report. However, more work needs to take place during the transition phase to build on these principles.
14. The role of the member includes:
 - a. Oversight of any decisions that can only be made by the member, rather than left to the entity (known as 'reserved matters')
 - b. The necessary oversight from the member's perspective that the parameters, policies and boundaries that the council has established are being adhered to

c. A mechanism to communicate the member's views to the entity

15. In addition, there should be evidence that the individual undertaking the member role is provided with suitable training and support commensurate with the role and is independent of the company. This responsibility may be delegated to a committee rather than an individual. If this is the case, there must be a terms of reference drawn up and a suitable cohort of elected members identified to sit on the committee.
16. Further work will be undertaken on the governance arrangements during the implementation phase and brought back to the Audit & Governance Committee in approximately six months.
17. During transition phase, it is proposed that the current OxLEP Ltd structure is retained. OxLEP Ltd has a clear governance framework that consists of policies and procedures, control systems and external validation to ensure the organisation is fulfilling its obligations. This includes a Finance and Audit Committee that provides internal challenge and scrutiny to the financial processes and procedures within the organisation. The S151 Officer from the County Council is invited to attend all meetings in their role representing the accountable body.
18. OxLEP Ltd appoint auditors each year, with the team structure approved by the Finance and Audit Committee under delegated powers and in November 2023, it appointed auditors for the financial year 2023/24 and approved the planned approach and outline scope for the Internal Controls Review 2024.
19. In line with Local Partnerships Local Authority Company Review Guidance (2023) Audit & Governance Committee will want to seek assurance that any recommendations from external or internal audit reviews have been implemented and that the company is acting in the council's best interests through other mechanisms such as a sub-committee.

Financial Implications

20. Government guidance is that assets of the LEP should be transferred to the public sector, and this includes those reserves retained to cover the potential risk of future redundancies. Similarly, in relation to Enterprise Zones, the future functioning, management, and governance of these should be agreed locally, in line with any pre-existing arrangements. Where LEPs cease operations, areas should reach locally agreeable and workable solutions to ensure a smooth transition of functions. Government expects that all decisions on the transfer and future management of assets will be taken by the LEP and its Accountable Body by March 2024 but recognises that the actual transfer process may stretch beyond that.
21. The Government confirmed on 19 December 2023 that they will provide up to £240,000 per local authority area in 2024/25 to deliver the functions previously delivered by LEPs – namely business representation, local economic planning, and delivery of Government programmes where directed – subject to final business case approval and the approval of integration plans. Funding beyond 2024/25 will

be subject to future spending review decision. This core funding is separate to any programme funding that may be provided to support the delivery of, for example, Growth Hubs or Careers Hubs. Funding for the delivery of government programmes as directed will be communicated to authorities by the responsible government department or body as per usual processes.

22. Oxfordshire County Council is the accountable body for OxLEP Ltd. As an accountable body, the Council takes responsibility for receipt and financial probity of external funding on behalf of the OxLEP Ltd and ensures the proper and effective use of those funds. As required in Financial Regulations, where the Council acts as an Accountable body, a formal agreement (memorandum of understanding) is in place which sets out the operational protocols between the Council and OxLEP Ltd.
23. Given the Government's decision to devolve LEP responsibilities to upper tier local authorities before the end of March 2024 a revised governance framework is needed that ensures that the County Council, as the body accountable for decisions, retains ultimate control. From 1 April 2024 the County Council is expected to become the sole member of OxLEP Ltd and the company member function will be exercised by Cabinet during the implementation phase.
24. The Council has undertaken due diligence to ensure it understands the financial position of OxLEP and any risks associated with the transfer of ownership of the company to the Council. From 2024/25 group accounts will be required to incorporate the accounts for the OxLEP Ltd Teckal company into the County Council's Statement of Accounts.

Comments checked by:
Kathy Wilcox, Head of Corporate Finance

Legal Implications

25. The Council has taken external legal advice jointly with OxLEP in relation to company law issues. The legal implications are summarised within the body of this report, in particular within the Governance Framework. As stated elsewhere in this report, the Cabinet decision taken on 27 February 2024 is dependent on the agreement of the OxLEP Board and any legal changes will not take effect until that agreement is obtained.

Comments checked by:
Paul Grant, Head of Legal and Deputy Monitoring Officer

LORNA BAXTER

Executive Director of Resources

Contact Officer: Robin Rogers, Programme Director (Partnerships and Delivery) robin.rogers@oxfordshire.gov.uk
Chloe Taylor, Head of Economy

chloe.taylor@oxfordshire.gov.uk

March 2024